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VIRLYNN TINNELL  
SUPERIOR COURT CLERK

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
9 **IN AND FOR THE COUNTY OF MOHAVE**

10 **STATE OF ARIZONA,**

11 **Plaintiff,**

12 **vs.**

13 **JUSTIN JAMES RECTOR,**

14 **Defendant.**

**No. CR-2014-01193**

**MOHAVE COUNTY SHERIFF'S  
OFFICE'S RESPONSE TO:  
Defendant's Motion to Permit Mr.  
Rector to Appear in Civilian  
Clothing and Without Restraints At  
All Proceedings and All Pretrial and  
Trial Phases**

15 COMES NOW the Mohave County Attorney, by and through Deputy County  
16 Attorney James M. Schoppmann, *Special Counsel* to Mohave County Sheriff, and  
17 hereby offers the following response to Defendant's Motion to Permit Mr. Rector to  
18 Appear in Civilian Clothing and Without Restraint At All Proceedings and All Pretrial and  
19 Trial Phases.

20 The Sheriff opposes any ruling that attempts to allow the Defendant to be  
21 unrestrained and/or in civilian clothing for proceedings that do not involve his jury while  
22 he remains in the custody of the Mohave County Sheriff. The Sheriff recognizes the  
23 Defendant's right to appear in civilian clothing for proceedings involving his jury. The  
24 Sheriff requests the opportunity to establish the need for the Defendant to wear a non-  
25 visible restraint during proceedings involving his jury and be accompanied by at least  
26 two (2) uniformed detention officers.



S8015CR201401193

1 Clothing

2  
3 Law:

4 The United States Supreme Court held that "...the state cannot, consistently with  
5 the Fourteenth Amendment, compel an accused to stand trial **before a jury** while  
6 dressed in identifiable prison clothes..." *Estelle v. Williams*, 425 U.S. 501, 512, (1976)  
7 (emphasis added).

8 In *Deck v. Missouri*, 544 U.S. 622, 626 (2005), the Supreme Court noted, while  
9 deciding whether visible shackles could be worn during the guilt phase of trial, the  
10 following:

11 "Blackstone and other English authorities recognized that **the rule did not apply**  
12 **at "the time of arraignment,"** or like proceedings before the judge...It was  
13 meant to protect defendants appearing at trial **before a jury**" (emphasis added).

14 Agreement:

15 The Sheriff agrees that the Defendant has a right to be in civilian clothing (free  
16 from any jail garb) for trial or jury proceedings. The Sheriff has a proven record of  
17 accomplishing this feat in all types of cases and with several different defendants and  
18 defense attorneys.

19  
20 Disagreement / Argument:

21 The Defendant has no right to require that he be dressed in civilian clothing for  
22 any proceeding that does not involve his jury. The holding in *Estelle* explicitly concerns  
23 proceedings in which a defendant is in front of his/her actual jury. Defendant's argument  
24 about how pretrial publicity and hearings could someone prejudice him is not based in  
25 law or fact and is purely speculative as it assumes that every potential juror in the  
26 county is following the media coverage and/or attending every hearing in which

1 defendant is visibly restrained and in jail garb. The Defendant cites no case for his  
2 request to apply *Estelle* or *Deck* to pretrial hearings.

### 3 4 Restraints

#### 5 6 Facts:

7 The Defendant has been brought to proceedings in this case in jail garb while in  
8 handcuffs and shackles. Based upon specific information the defendant has also been  
9 wearing a form of body armor under his jail garb for most hearings.

10 The MCSO uses a variety of no-visible restraint devices when a defendant is  
11 attending his/her trial or jury related hearing. These non-visible restraint devices include  
12 a shock belt and a knee lock brace.

#### 13 14 Law:

15 In *Deck v. Missouri*, 544 U.S. 622, 624 (2005), the Supreme Court specifically  
16 stated:

17 We hold that the Constitution forbids the use of **visible** shackles during the  
18 penalty phase, as it forbids their use during the guilt phase, *unless* that use is  
"justified by an essential state interest"—such as the interest in courtroom  
security—specific to the defendant on trial (emphasis added).

19 The *Deck* Court, in its analysis of case law and commentary, went on to state, "...a  
20 criminal defendant has a right to remain free of physical restraints that are **visible** to the  
21 jury..." *Id.*, at 628. (emphasis added). Additionally, the *Deck* Court reiterated its holding  
22 by stating:

23 "Thus, the Fifth and Fourteenth Amendments prohibit the use of physical  
24 **restraints visible to the jury** absent a trial court determination, in the exercise  
25 of its discretion, that they are justified by a state interest specific to a particular  
trial. Such a determination may of course take into account the factors that courts  
have traditionally relied on in gauging potential security problems and the risk of  
escape at trial (emphasis added)."

26 *Id.*, at 629. Additionally, the *Deck* Court noted that the rule did not apply to the

1 arraignment or similar proceedings before the judge. *Id.*; at 626.

2 The Arizona Supreme Court applied the *Deck* standard in *State v. Dixon*, 226  
3 Ariz. 545, 551-52 (2011) *en banc*. In *Dixon* the Court made it clear that the issue hinged  
4 on whether the restraint is visible to the jury. The *Dixon* court went on to analyze the  
5 use of a leg brace and stun belt in that case. The Court found both devices to be non-  
6 visible. *Id.*, at 552. Additionally, the *Dixon* Court stated that there was no cited case  
7 holding that concealed leg braces violated the rule in *Deck*, rather the reported  
8 decisions "correctly treat a leg brace worn under clothing as not visible..." *Id.* The *Dixon*  
9 Court applied the fundamental error analysis in regards to the stun belt because no  
10 objection was made at trial.

11 As recently as 2013, the Arizona Supreme Court decided a case that analyzed  
12 several of the principles of law discussed above when it decided *State v. Benson*, 232  
13 Ariz. 452 (2013). The *Benson* Court held that a trial court's decision to permit restraints  
14 during trial is reviewed under an 'abuse of discretion' standard and that is was "settled  
15 Arizona law ... leav[ing] determinations regarding courtroom security to the trial judge's  
16 discretion." *Id.*, at 461.

17 In *Benson*, defendant Benson was required to wear a stun belt and leg brace  
18 during trial. *Id.* Before trial, the security supervisor testified that Benson created a  
19 security risk based upon the violent nature of the charges and recommended a stun belt  
20 and leg brace and that two uniformed deputies stay in the courtroom. *Id.* Benson  
21 countered that he was not a security risk because of the lack of complaints while in pre-  
22 trial custody. *Id.*

23 The *Benson* Court held that a defendant generally has the right to be free from  
24 restraints in the courtroom, but the court may order their use if, in the court's discretion,  
25 the restraints are needed for courtroom security and safety. *Id.* The court must have  
26 grounds for ordering restraints and should not simply defer to the prosecutor's request,

1 a sheriff's department's policy, or security personnel's preference for the use of  
2 restraints. *Id.* The type of restraints used should be proportionate to the security risk  
3 presented. *Id.*

4 The *Benson* Court noted that the stun belt and leg brace were not visible to the  
5 jury. *Id.*, at 461-462. More importantly, that the trial court acted within its discretion by  
6 permitting use of the restraints to ensure Benson would not endanger others or try to  
7 escape when it based its ruling on case-specific concerns, including: the security  
8 supervisor's individualized security risk assessment of Benson, the potential for  
9 imposition of the death penalty, the layout of the particular courtroom and building, and  
10 specific admissions made by Benson to the police. *Id.*, at 461. Finally, the *Benson* Court  
11 stated a trial court is not required to first pursue less restrictive alternatives before  
12 allowing a stun belt. *Id.*

13  
14 Agreement:

15 The Sheriff agrees that a defendant should appear for trial or jury proceeding free  
16 from the appearance of any visible restraint device unless the Court finds specific  
17 grounds supporting the need for extraordinary measures. As of the date of this  
18 response Jail Director Don Bischoff believes the safety and security of the Defendant,  
19 court, and public can be ensured without visible restraint devices during any trial or jury  
20 proceeding.

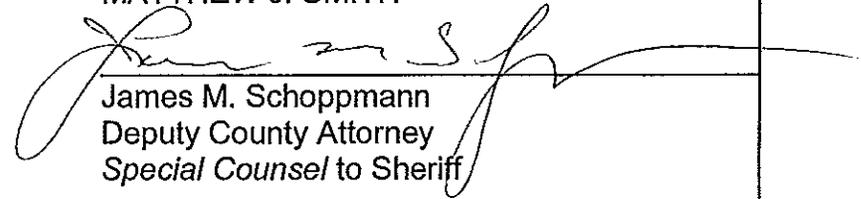
21  
22 Disagreement / Argument:

23 A defendant's constitutional rights are not violated when he is required to wear a  
24 visible restraint device to proceedings that do not involve his jury and Defendant has  
25 offered nothing to support his contrary position. The decision to utilize restraints at trial  
26 and/or in the presence of his jury rests in the discretion of this Court. Director Bischoff

1 has similar safety and security concerns as those expressed in *Benson* and is  
2 recommending that the Defendant wear a stun belt or knee brace and be accompanied  
3 by two uniformed detention officers during trial or jury proceedings.

4 RESPECTFULLY SUBMITTED THIS 1st DAY OF MAY, 2015.

5  
6 MOHAVE COUNTY ATTORNEY  
MATTHEW J. SMITH

7   
8 James M. Schoppmann  
9 Deputy County Attorney  
Special Counsel to Sheriff

10 A copy of the foregoing sent this same day to:  
11 Honorable Lee F. Jantzen  
12 Greg McPhillips, Mohave County Attorney's Office (email)  
13 Ron Gilleo, Mohave County Legal Defender's Office (email)  
14 Gerald T. Gavin, Attorney for Defendant (email)

15 By JMS

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